

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,

Petitioner,

vs.

JASON LANGLEY,

Respondent.

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No. 13-2143 BN

DECISION

Jason Langley is not subject to discipline because the State Board of Nursing (“Board”) failed to prove that he committed an act for which the law allows discipline.

Procedure

The Board filed a complaint on December 20, 2013. Langley and his attorney were each served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on February 3, 2014. Langley filed an answer on February 6, 2014.

This Commission convened a hearing on the complaint on June 5, 2014. Patricia D. Perkins represented the Board. Langley was represented by Daniel T. Moore. The matter became ready for our decision on September 2, 2014, the date the last written argument was due.

Findings of Fact

1. Langley is licensed as a registered professional nurse (“RN”). The license was first issued by the Board in 1999 and has been current and active at all times since.

2. In 2001, Langley was hired at DePaul Health Center (“DePaul”) in Bridgeton, Missouri, and worked in the intensive care unit (“ICU”) as an RN and charge nurse.
3. In November 2010, two calls were made to the corporate responsibility hotline at DePaul alleging that Langley had engaged in unwelcome and sexually suggestive behavior toward a female colleague at a nursing station for the ICU.
4. The reporter and alleged victim, SF, told the investigator for DePaul that on October 29, 2010, Langley put his hands on her shoulders and pretended to “hump” her while she was bent over at the nurses’ station looking at a paper.
5. Finding no other witnesses to the described behavior, the De Paul investigator concluded the first hotline call was unsubstantiated.
6. When the DePaul investigator looked into the second hotline call, it was revealed that SF now alleged that Langley pretended to “hump” another female nurse, RT, behind that nurse’s back on November 5, 2010 and that SF witnessed it.
7. RT denied Langley had done to her what SF described.
8. DePaul dismissed Langley in December of 2010 and reported the dismissal to the Board.
9. When interviewed by the DePaul investigator, and later by the Board’s investigator, Langley denied ever doing what Franklin accused him of doing to her or to RT.

Conclusions of Law

We have jurisdiction to hear the case.¹ The Board has the burden of proving that Langley committed an act for which the law allows discipline.² This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony

¹Section 621.045. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

²*Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

of any witness.³ When there is a direct conflict in the testimony, we must make a choice as to whose testimony is more credible.⁴ When there is conflicting testimony between the only two fact witnesses who testified, and we judge the witnesses to be equally credible, the Board has failed to prove its alleged facts by a preponderance of the evidence. There was much hearsay testimony in the investigative report introduced by the Board, and received into evidence as Exhibit 1. Where no objection is made, hearsay evidence in the records can and must be considered in administrative hearings.⁵ However, Langley did object to this hearsay and the Board failed to call witnesses whose interviews appear in its investigative report. While it was made clear that one such witness was in Alaska, the Board is aware that we allow telephone testimony in our hearings.

The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence[.]

³ *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992).

⁴ *Id.*

⁵ *Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App., S.D. 2004) (citing *Dorman v. State Bd. of Regis'n for the Healing Arts*, 62 S.W.3d 446 (Mo. App., W.D. 2001)).

Professional Standards – Subdivision (5)

In its complaint, the Board limits its allegations under this subdivision to misconduct. Therefore, we limit our analysis under this subdivision to this issue.

Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”⁶ The Board has failed to prove that Langley willfully committed an act with a wrongful intention.

Langley is not subject to discipline under § 335.066.2(5).

Professional Trust – Subdivision (12)

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.⁷ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.⁸ Finding no underlying misconduct upon which to conclude Langley violated a professional trust or confidence, we determine Langley is not subject to discipline under § 335.066.2(12).

Summary

Langley is not subject to discipline under § 335.066.2(5) or (12).

SO ORDERED on November 13, 2014.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁶*Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo. App. E.D. 1988).

⁷*Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

⁸*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App. E.D. 1989).